

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Nicholas M. VALIANTE, Jr.

Application No.: 10/814,480

Confirmation No.: 9427

Filed: March 29, 2004

Art Unit: 1617

For: USE OF SMALL MOLECULE COMPOUNDS
FOR IMMUNOPOTENTIATION

Examiner: Y. S. Chong

STATEMENT OF SUBSTANCE OF INTERVIEW

INTRODUCTORY COMMENTS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This is in response to the Interview Summary mailed August 28, 2008 in connection with the above-identified patent application, enclosing an Examiner's Interview Summary, for which a response is due on September 24, 2008. Accordingly, this response is timely filed.

Applicants thank the Examiner for extending the courtesy of a telephonic interview on August 26, 2008 to discuss the invention as described in the claims presented and the rejection mailed on June 24, 2008.

The Applicants acknowledge the interview summary as an accurate record of some of the topics discussed, but wish to add the following comments. The first issue addressed in the interview, at the Applicant's request, related to the identity and skill level of the 'person having ordinary skill in the art' (the PHOSITA). The sole outstanding issue in this case is an obviousness rejection, and the rejection did not identify or discuss the level of skill in the art. The Applicants

asked the Examiner to identify who the PHOSITA would be in order to discuss the rejection with the proper level of skill in mind, and the Examiner replied that he did not know who the PHOSITA was. The Applicant's representative suggested this person might be a medical practitioner, i.e., a physician treating a patient, and the Examiner appeared to agree that seemed reasonable. It was on that basis that the entire interview was conducted. While the Applicant does not intend to assert that this was clearly agreed upon as defining the PHOSITA or skill level for the claims at issue, the Applicant wishes to point out that the obviousness rejection was presented and made final without identifying the level of ordinary skill in the art. Because this determination is critical in an obviousness rejection, this aspect of the Interview is considered important.

Please enter into the record that Applicants acknowledge and agree with the Substance of the Interview as described by the Examiner, but that the interview was conducted on the basis of an assumed level of skill (i.e., from the perspective of a particular PHOSITA) that the Examiner had not previously identified as the basis for the obviousness rejection.

REMARKS

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 223002107200. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: September 19, 2008

Respectfully submitted,

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